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EXAMINER
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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 November 2003</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>22-24,32-35 and 37-42</u> is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) <u>22-24 and 32</u> is/are allowed.

6)☒ Claim(s) <u>33-35 and 37-42</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>05 February 2002</u> is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All   b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. <u>08/934,220</u>.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20-23</u>.

4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>26</u>.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1.   The applicant's amendment filed 11/7/03 has been considered. Claims 22-24,

32-35, 37-38 and new added claims 39-42 are presented for examination. Claims 1-21,

25-31, and 36 have been canceled.

2.   The objection to claims 36-38 under 37 CFR 1.75(c), as being of improper

dependent form for failing to further limit the subject matter of a previous claim, is

withdrawn due to the applicant's amendment filed 11/7/03.

3.   Claims 22-24 and 32-33 are allowable over the prior art of record.

4.   The amendment filed 08/26/02, 3/21/03 and 11/07/03 are objected to under 35

U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states

that no amendment shall introduce new matter into the disclosure of the invention. The

added material which is not supported by the original disclosure is as follows: " . . . the

processor is further programmed to receive the rewrite control program from the

rewriting device at the predetermined baud rate" claim 33; "change a speed . . . a new

communication speed . . . before storing the rewrite control program in the second

memory, the new communication speed being higher than a communication speed of

the information sent from the external device for the determination of a rewrite mode"

claim 34; and claims 35 and 39-40 having the similar problems as discussed above.

Applicant is required to cancel the new matter in the reply to this Office Action.

5.   The drawings are objected to under 37 CFR 1.83(a). The drawings must show

every feature of the invention specified in the claims. Therefore, " . . . the processor is

further programmed to receive the rewrite control program from the rewriting device at

the predetermined baud rate" claim 33; "change a speed . . . a new communication

speed . . . before storing the rewrite control program in the second memory, the new

communication speed being higher than a communication speed of the information sent

from the external device for the determination of a rewrite mode" claim 34; and claims

35 and 39-40 having the similar problems as discussed above must be shown or the

feature(s) canceled from the claim(s). No new matter should be entered.

        A proposed drawing correction or corrected drawings are required in reply to the

Office action to avoid abandonment of the application. The objection to the drawings

will not be held in abeyance.

6.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of
> making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the
> art to which it pertains, or with which it is most nearly connected, to make and use the same and shall
> set forth the best mode contemplated by the inventor of carrying out his invention.

7.   Claims 33 –35 and 37-42 are rejected under 35 U.S.C. 112, first paragraph, as

failing to comply with the written description requirement. The claim(s) contains subject

matter which was not described in the specification in such a way as to reasonably

convey to one skilled in the relevant art that the inventor(s), at the time the application

was filed, had possession of the claimed invention. In particular, " . . . the processor is

further programmed to receive the rewrite control program from the rewriting device at

the predetermined baud rate" claim 33; "change a speed . . . a new communication

speed . . . before storing the rewrite control program in the second memory, the new

communication speed being higher than a communication speed of the information sent

from the external device for the determination of a rewrite mode" claim 34 and claims 35

and 39-40 having the similar problems were not described in the specification in such a

way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the

time the application was filed, had possession of the claimed invention

8.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9.   Claims 34-35 and 37-42 are rejected under 35 U.S.C. 102(b) as being

anticipated by Berra et al., U.S. patent No. 5278759 (hereinafter Berra).

As per claim 34, Berra shows a control unit (e.g., fig. 1, el. 12) for a vehicle

having a vehicle control device, the control unit comprising: a first memory storing

therein at least one of a device control program and data for controlling the vehicle

control device, the first memory being a nonvolatile type (e.g., fig. 2, el. Z179, col. 7,

lines 30-50); a second memory provided in addition to the first memory (e.g., col. 12,

lines 59-65); and a processor for controlling the vehicle control device by using at least

one of a device control program and data stored in the first memory (e.g., fig. 2, el. Z144; col. 8, lines 50-56); the processor is constructed to store in a second memory a rewrite control program sent from an external device for executing rewriting of the first memory upon determination of a rewrite mode based on information sent from the external device (e.g., col. 12, lines 50-65; col. 13, lines 15-25; col. 9, lines 45-60) , and to rewrite the first memory with at least one of a new device control program and data sent from the external device based on the rewrite control program stored in the second memory (e.g., col. 13, lines 15-25; col. 14, lines 28-35) ; and the processor is constructed to change a speed of communication with the external device to a new communication speed upon the determination of a rewrite mode (e.g., col. 15, lines 10-25 and col. 12, lines 50-65; col. 8, lines 35-55) and before storing the rewrite control program in the second memory (i.e., computer program, e.g., col. 13, lines 10-25; col. 15, lines 10-25; and col. 15, lines 35-38; or i.e., before storing the rewrite control program in the second memory of a next communication with the external device; e.g., col. 13, lines 10-25; col. 15, lines 10-25; or i.e., an initial speed of this communication increase to 11,718 baud rate compared to last initial speed 7812.5 baud rate; e.g., col. 15, lines 10-38), the new communication speed being higher than a communication speed of the information sent from the external device for the determination of a rewrite mode (i.e., computer program, e.g., col. 13, lines 10-25; col. 15, lines 10-25; and col. 15, lines 35-38; or i.e., before storing the rewrite control program in the second memory of a next communication with the external device; e.g., col. 13, lines 10-25; col. 15, lines

10-25; or i.e., an initial speed of this communication increase to 11,718 baud rate

compared to last initial speed 7812.5 baud rate; e.g., col. 15, lines 10-38).

As per claim 35, Berra shows a control unit (e.g., fig. 1, el. 12) for a vehicle

having a vehicle control device, the control unit comprising: a first memory storing

therein at least one of a device control program and data for controlling the vehicle

control device, the first memory being a nonvolatile type (e.g., fig. 2, el. Z179, col. 7,

lines 30-50); a second memory provided in addition to the first memory (e.g., col. 12,

lines 59-65); and a processor for controlling the vehicle control device by using at least

one of a device control program and data stored in the first memory (e.g., fig. 2, el.

Z144; col. 8, lines 50-56); the processor is constructed to store in a second memory a

rewrite control program sent from an external device for executing rewriting of the first

memory upon determination of a rewrite mode based on information sent from the

external device (e.g., col. 12, lines 50-65; col. 13, lines 15-25; col. 9, lines 45-60) , and

to rewrite the first memory with at least one of a new device control program and data

sent from the external device based on the rewrite control program stored in the second

memory (e.g., col. 13, lines 15-25; col. 14, lines 28-35) ; and wherein the processor is

further constructed to change a speed of communication with the external device to a

new communication speed upon the determination of a rewrite mode (e.g., col. 15, lines

10-25; col. 12, lines 50-65; and col. 8, lines 35-55) and before receiving the rewrite

control program from the external device (i.e., computer program, e.g., col. 13, lines 10-

25; col. 15, lines 10-25; and col. 15, lines 35-38; or i.e., before receiving the rewrite

control program in the second memory of a next communication with the external

device; e.g., col. 13, lines 10-25; col. 15, lines 10-25; or i.e., an initial speed of this

communication increase to 11,718 baud rate compared to last initial speed 7812.5 baud

rate; e.g., col. 15, lines 10-38), the new communication speed being higher than a

communication speed of the information sent from the external device for the

determination of a rewrite mode (i.e., computer program, e.g., col. 13, lines 10-25; col.

15, lines 10-25; and col. 15, lines 35-38; or i.e., before receiving the rewrite control

program in the second memory of a next communication with the external device; e.g.,

col. 13, lines 10-25; col. 15, lines 10-25; or i.e., an initial speed of this communication

increase to 11,718 baud rate compared to last initial speed 7812.5 baud rate; e.g., col.

15, lines 10-38).

As per claim 39, Berra shows a control unit (e.g., fig. 1, el. 12) for a vehicle

having a vehicle control device, the control unit comprising: a first memory storing

therein at least one of a device control program and data for controlling the vehicle

control device, the first memory being a nonvolatile type (e.g., fig. 2, el. Z179, col. 7,

lines 30-50); a second memory provided in addition to the first memory (e.g., col. 12,

lines 59-65); and a processor for controlling the vehicle control device by using the at

least one of a device control program and data stored in the first memory (e.g., fig. 2, el.

Z144; col. 8, lines 50-56); the processor is constructed to store in the second memory a

rewrite control program sent from an external device for executing rewriting of the first

memory upon determination of a rewrite mode based on information sent from the

external device (e.g., col. 12, lines 50-65; col. 13, lines 15-25; col. 9, lines 45-60), and

to rewrite the first memory with at least one of a new device control program and data

sent from the external device based on the rewrite control program stored in the second

memory (e.g., col. 13, lines 15-25; col. 14, lines 28-35) ; and the processor is

constructed to change a speed of communication with the external device to a new

communication speed after the determination of a rewrite mode (e.g., col. 15, lines 10-

25 and col. 12, lines 50-65; col. 8, lines 35-55) and before storing the rewrite control

program in the second memory (i.e., computer program, e.g., col. 13, lines 10-25; col.

15, lines 10-25; and col. 15, lines 35-38; or i.e., before storing the rewrite control

program in the second memory of a next communication with the external device; e.g.,

col. 13, lines 10-25; col. 15, lines 10-25; or i.e., an initial speed of this communication

increase to 11,718 baud rate compared to last initial speed 7812.5 baud rate; e.g., col.

15, lines 10-38), the new communication speed being higher than a communication

speed of the information sent from the external device for the determination of a rewrite

mode (i.e., computer program, e.g., col. 13, lines 10-25; col. 15, lines 10-25; and col.

15, lines 35-38; or i.e., before storing the rewrite control program in the second memory

of a next communication with the external device; e.g., col. 13, lines 10-25; col. 15, lines

10-25; or i.e., an initial speed of this communication increase to 11,718 baud rate

compared to last initial speed 7812.5 baud rate; e.g., col. 15, lines 10-38).

As per claim 40, Berra shows a control unit (e.g., fig. 1, el. 12) for a vehicle

having a vehicle control device, the control unit comprising: a first memory storing

therein at least one of a device control program and data for controlling the vehicle

control device, the first memory being a nonvolatile type (e.g., fig. 2, el. Z179, col. 7,

lines 30-50); a second memory provided in addition to the first memory (e.g., col. 12,

lines 59-65); and a processor for controlling the vehicle control device by using the at

least one of a device control program and data stored in the first memory (e.g., fig. 2, el.

Z144; col. 8, lines 50-56); the processor is constructed to store in a second memory a

rewrite control program sent from an external device for executing rewriting of the first

memory upon determination of a rewrite mode based on information sent from the

external device (e.g., col. 12, lines 50-65; col. 13, lines 15-25; col. 9, lines 45-60) , and

to rewrite the first memory with at least one of a new device control program and data

sent from the external device based on the rewrite control program stored in the second

memory (e.g., col. 13, lines 15-25; col. 14, lines 28-35) ; and the processor is

constructed to change a speed of communication with the external device to a new

communication speed after the determination of a rewrite mode (e.g., col. 15, lines 10-

25 and col. 12, lines 50-65; col. 8, lines 35-55) and before receiving the rewrite control

program in the second memory (i.e., computer program, e.g., col. 13, lines 10-25; col.

15, lines 10-25; and col. 15, lines 35-38; or i.e., before receiving the rewrite control

program in the second memory of a next communication with the external device; e.g.,

col. 13, lines 10-25; col. 15, lines 10-25; or i.e., an initial speed of this communication

increase to 11,718 baud rate compared to last initial speed 7812.5 baud rate; e.g., col.

15, lines 10-38), the new communication speed being higher than a communication

speed of the information sent from the external device for the determination of a rewrite

mode (i.e., computer program, e.g., col. 13, lines 10-25; col. 15, lines 10-25; and col.

15, lines 35-38; or i.e., before receiving the rewrite control program in the second memory of a next communication with the external device; e.g., col. 13, lines 10-25; col. 15, lines 10-25; or i.e., an initial speed of this communication increase to 11,718 baud rate compared to last initial speed 7812.5 baud rate; e.g., col. 15, lines 10-38).

As per claim 37, Berra teaches, wherein the processor is further constructed to change the speed of communication with the external device to the new communication speed before the rewrite control program is sent from the external device and before storing the rewrite control program in the second memory (i.e., computer program, e.g., col. 13, lines 10-25; col. 15, lines 10-25; and col. 15, lines 35-38; or i.e., before sending and storing the rewrite control program in the second memory of a next communication with the external device; e.g., col. 13, lines 10-25; col. 15, lines 10-25; or i.e., an initial speed of this communication increase to 11,718 baud rate compared to last initial speed 7812.5 baud rate; e.g., col. 15, lines 10-38).

As per claim 38, Berra teaches, wherein the processor is further constructed to change the speed of communication with the external device to the new communication speed before the at least one of a new device control program and data is sent from the external device and before receiving the rewrite control program from the external device (i.e., computer program, e.g., col. 13, lines 10-25; col. 15, lines 10-25; and col. 15, lines 35-38; or i.e., before receiving the rewrite control program in the second memory and a new device control program of a next communication with the external device; e.g., col. 13, lines 10-25; col. 15, lines 10-25; or i.e., an initial speed of this

communication increase to 11,718 baud rate compared to last initial speed 7812.5 baud rate; e.g., col. 15, lines 10-38).

10.   Applicant's arguments filed 11/07/03 have been fully considered but they are not persuasive.

11.   In the remarks and the telecommunication the applicant's argued that for example, steps S1300-S1350 in fig. 12; page 42, line 19 to page 43, line 9; and page 54, lines 14-20 of the specification providing the support for the claimed features "change a speed . . . a new communication speed. . . before storing the rewrite control program in the second memory, the new communication speed being higher than a communication speed of the information sent from the external device for the determination of a rewrite mode" claim 34 and claims 35 and 39-40 having the similar problems.

The examiner disagreed with applicant's argument because after reviewing, the steps S1300-S1350 in fig. 12; page 42, line 19 to page 43, line 9; and page 54, lines 14-20 of the specification, the examiner still can not find the support for the claimed features "change a speed . . . a new communication speed. . . before storing the rewrite control program in the second memory, the new communication speed being higher than a communication speed of the information sent from the external device for the determination of a rewrite mode" as claimed in claim 34 and claims 35 and 39-40.

12.   In the remarks the applicant argued that the higher baud rate disclosed in col. 15

of Berra directed to increase the speed of communication at the time device control

program are being rewritten, not at the time rewrite control programs are being

communicated.

The examiner disagreed with the applicant's argument because according to the

col. 5, lines 10-25, Berra teaches the higher communication is for the transmission

speed of computer programs and col. 13, lines 10-25, Berra teaches the setup program

(i.e., rewrite control program) called the next computer program for controlling rewrite

program. Therefore, Berra also directed to increase the speed of communication at the

time rewrite control programs are being communicated.

Also, as stated in the above rejections, Berra teaches the processor is

constructed to change a speed of communication with the external device to a new

communication speed upon/after the determination of a rewrite mode (e.g., col. 15, lines

10-25 and col. 12, lines 50-65; col. 8, lines 35-55) and before receiving the rewrite

control program in the second memory (i.e., computer program, e.g., col. 13, lines 10-

25; col. 15, lines 10-25; and col. 15, lines 35-38; or i.e., before receiving the rewrite

control program in the second memory of a next communication with the external

device; e.g., col. 13, lines 10-25; col. 15, lines 10-25; or i.e., an initial speed of this

communication increase to 11,718 baud rate compared to last initial speed 7812.5 baud

rate; e.g., col. 15, lines 10-38), the new communication speed being higher than a

communication speed of the information sent from the external device for the

determination of a rewrite mode (i.e., computer program, e.g., col. 13, lines 10-25; col.

15, lines 10-25; and col. 15, lines 35-38; or i.e., before receiving the rewrite control

program in the second memory of a next communication with the external device; e.g.,

col. 13, lines 10-25; col. 15, lines 10-25; or i.e., an initial speed of this communication

increase to 11,718 baud rate compared to last initial speed 7812.5 baud rate; e.g., col.

15, lines 10-38).

13.   In the remarks, the applicant's argued that Berra failed to disclose increased

communication speed being triggered by the determination of a rewrite mode.

The examiner disagreed with the applicant's arguments because Berra, teaches

change a speed of communication with the external device to a new communication

speed upon/after the determination of a rewrite mode (e.g., col. 15, lines 10-25 and col.

12, lines 50-65; col. 8, lines 35-55).

14.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Denise Tran whose telephone number is (703) 305-

9823. The examiner can normally be reached on Monday, Thursday and an alternated

Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Matt Kim can be reached on (703) 305-3821. The fax phone numbers for

the organization where this application or proceeding is assigned are (703) 746-7239 for

Official communications, (703) 746-7240 for Non Official communications, and (703)

746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Newapon

D.T.
April 4, 2004